

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN P. SHIPMAN,

Plaintiff-Appellant,

and

PATRICE M. UHNARY,

Plaintiff/Counter-Plaintiff,

v

STOUT RISIUS ROSS, INC and GORDON K.
VELLA,

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED

August 2, 2012

No. 303288

Oakland Circuit Court

LC No. 2009-106112-CZ

Before: K. F. KELLY, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff-appellant, Susan P. Shipman, appeals as of right an order granting summary disposition under MCR 2.116(C)(7) to defendants Stout Risius Ross, Inc. (SRR) and Gordon K. Vella, on the ground that her claim was barred by a contractual limitations period. We affirm.

Shipman first argues that the trial court erred in granting defendants' motion for summary disposition because the agreement Shipman signed in 2005 (2005 Agreement), which provided for a contractual limitations period, was nullified by a subsequent agreement between the parties, signed in 2007 (2007 Agreement). The grant or denial of summary disposition is reviewed de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "When reviewing a motion for summary disposition under MCR 2.116(C)(7), all well-pleaded allegations must be accepted as true and construed in favor of the nonmoving party, unless contradicted by any affidavits, depositions, admissions, or other documentary evidence submitted by the parties." *Pierce v City of Lansing*, 265 Mich App 174, 177; 694 NW2d 65 (2005). "If the pleadings or other documentary evidence reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is . . . barred." *Holmes v Mich Capital Med Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

To the extent this issue requires the proper interpretation of a contract, that is a question of law reviewed de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). In interpreting a contract, this Court's obligation is to determine the intent of the parties. *Quality Prod & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). This Court must examine the language of the contract and accord the words their ordinary and plain meanings, if such meanings are apparent. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). If the contractual language is unambiguous, courts must interpret and enforce the contract as written. *Quality Prod*, 469 Mich at 375. "Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Id.*

The 2005 Agreement provided that Shipman may not assert "any lawsuit or other claim" against her employer, SRR, or managers within SRR, including Vella in this case "beyond the sooner of the applicable statute of limitations or 182 days after" termination. However, on September 7, 2007, Shipman signed an employee agreement with SRR that provided:

This Agreement supersedes all previous agreements between Employee and the SRR Entities and contains the entire understanding and agreement between the parties with respect to the subject matter hereof, whether written or oral, with the exception of the Employee Handbook, its Acknowledgement, and other policies as addressed in Section 2.3 of this Agreement.

An integration clause in an agreement nullifies all antecedent agreements between the parties. *Archambo*, 466 Mich at 413-414.

Defendants claim that the 2007 Agreement's integration clause does not supersede the 2005 Agreement's contractual limitations period because the integration clause of the 2007 Agreement limits the agreement's scope to the "subject matter" of the 2007 Agreement. Specifically, defendants ask this Court to read the terms "with respect to the subject matter thereof" as modifying "[t]his Agreement supersedes all previous agreements between Employee and the SRR Entities." A plain reading of the provision from the 2007 Agreement reveals that there are two clauses in regard to the legal effect of the 2007 Agreement. The first clause states that the 2007 Agreement "supersedes all previous agreements between Employee and the SRR Entities." The second clause states that the 2007 Agreement "contains the entire understanding and agreement between the parties with respect to the subject matter thereof" the grammatical "last antecedent" rule provides that a modifying or restrictive word or clause is confined solely to the immediately preceding clause or last antecedent, unless a contrary intention appears in the text. *Stanton v City of Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). Accordingly, the modifying effect of the clause "with respect to the subject matter thereof" is limited to the immediately preceding clause ("contains the entire understanding and agreement between the parties"). The clause "this Agreement supersedes all previous agreements between Employee and the SRR Entities" is not modified by the restrictive clause "with respect to the subject matter thereof." The 2007 Agreement controls.

Plaintiff next argues that the 2007 Agreement has no limitations period and that defendants' argument that the contractual limitation period located in SRR's employee handbook should control this case is without merit because the handbook is not a binding contract. However, the ordinary and plain meaning of the 2007 Agreement expressly incorporated SRR's

employee handbook into the terms of the employee agreement. Also, Shipman signed the 2007 Agreement and Shipman does not challenge the binding nature of that agreement. Thus, the 2007 Agreement was a binding contract between SRR and Shipman that provided that Shipman was subject to the contractual limitations period within SRR's employee handbook. Because Shipman was fired by SRR on December 31, 2008, and did not file her complaint until December 9, 2009, Shipman's claims were properly barred by the trial court.

Shipman argues that even if the 2005 Agreement was not invalidated by the 2007 Agreement, it was invalidated by the waiver and equitable estoppel doctrines. Because we hold that the 2005 Agreement was superseded by the 2007 agreement, we apply Shipman's argument to the binding contractual limitations period within SRR's employee handbook. This Court considers de novo a trial court's equitable decisions. *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004). "A waiver is a voluntary relinquishment of a known right." *Dellar v Frankenmuth Mut Ins Co*, 173 Mich App 138, 146; 433 NW2d 380 (1988). Because Shipman does not allege that SRR voluntarily relinquished its right to assert the contractual limitations period, the waiver doctrine does not prevent the application of the contractual limitations period in this case.

In regard to equitable estoppel, in a contractual or statutory limitations case "[f]or equitable estoppel to apply, plaintiff must establish that (1) defendant's acts or representations induced plaintiff to believe that the limitations period clause would not be enforced, (2) plaintiff justifiably relied on this belief, and (3) she was prejudiced as a result of her reliance on her belief that the clause would not be enforced. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 204-205; 747 NW2d 811 (2008). The record before the trial court reveals a series of settlement communications between Shipman and SRR. Based on SRR's continued negotiations with her, Shipman claims that SRR induced her not to file her complaint against SRR. However, *McDonald* requires that Shipman establish that SRR's negotiations induced her to believe that the contractual limitations period clause would not be enforced. *Id.* at 204. Here, Shipman's trial counsel admitted that he and Shipman were unaware that any contractual limitations period existed in this case during settlement negotiations. Accordingly, SRR could not have induced Shipman to believe that the limitations period would not be enforced. Moreover, Shipman could not have "justifiably relied" on a belief that the contractual limitations period would not be enforced as required by *McDonald*, 480 Mich at 204. Thus, the estoppel doctrine does not apply to this case.

Finally, Shipman argues that she complied with the 2005 Agreement by asserting a "claim" within the 182-day claims period when she provided SRR with a claim letter on April 29, 2009. Because the 2005 Agreement was superseded by the 2007 agreement, this argument is moot. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer